

§ 518.28 Unified and specified commands.

(a) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (f)); it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A. For Army components of unified commands, if the requested records are joint documents, process the FOIA request through unified command channels. If the requested documents are Army-unique, process the FOIA request through Army channels.

(b) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

§ 518.29 Relationship between the FOIA and the Privacy Act (PA).

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(a) Requesters who seek records about themselves contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the PA.

(b) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply the PA, will have their requests processed under the pro-

visions of the FOIA, since they have no access under the PA.

(c) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemptions and fees of the PA. This is appropriate since greater access will be received under the PA.

(d) Requesters who seek access to agency records and who cite or imply the PA and FOIA, will have their requests processed under the FOIA.

(e) Requesters who seek access to agency records and who cite or imply the FOIA, will have their requests processed under the FOIA.

(f) Requesters should be advised in final responses why their request was processed under a particular Act.

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56010, Oct. 31, 1991]

§ 518.30 Records management.

FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules. See AR 25-400-2. AR 25-1 contains Army policy for records management requirements in the life cycle management of information. Information access and release, to include potential electronic access by the public, will be considered during information systems design.

Subpart B—FOIA Reading Rooms**REQUIREMENTS****§ 518.31 Reading room.**

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. In addition to the materials described below, Components may elect to place other documents in their reading room as a means to provide public access to such documents. DoD Components may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part. The Army FOIA Reading

§ 518.32

Room is operated by The Freedom of Information and Privacy Act Division, Information Systems Command. It is located in room 1146, Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301. It is open from 0800 to 1530 Monday through Friday, except holidays.

§ 518.32 Material availability.

The FOIA requires that so-called “(a)(2)” materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from “(a)(2)” materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the FEDERAL REGISTER a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called “(a)(2)” materials are:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (g)), that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria

32 CFR Ch. V (7-1-98 Edition)

for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

INDEXES

§ 518.33 “(a)(2)” materials.

(a) Each DoD Component shall maintain in each facility prescribed in § 518.31, an index of materials described in § 518.4, that are issued, adopted, or promulgated, after July 4, 1967. No “(a)(2)” materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

(b) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of “(a)(2)” materials or supplements thereto unless it publishes in the FEDERAL REGISTER an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F.

(c) Each index of “(a)(2)” materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

§ 518.34 Other materials.

(a) Any available index of DoD Component material published in the FEDERAL REGISTER, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA